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14 Superior Court of California

15 SBN 82404, Los Angeles

16 APR 17 2018

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19 Attorneys for Plaintiff

20 NO FEE – GOV'T CODE § 6103

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA

22 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

23 THE PEOPLE OF THE STATE OF CALIFORNIA,

24 Plaintiff,

25 vs.

26 BURNET GARDEN APARTMENT COMPLEX LLC,
27 a California Limited Liability Company; and DOES
28 1 through 50, inclusive,

29 Defendants.

30 Case No.: BC 702409

31 COMPLAINT FOR ABATEMENT AND
32 INJUNCTION

33 [CIVIL CODE SECTION 3479, *ET
34 SEQ.*; BUS. & PROF. CODE SECTION
35 17200, *ET SEQ.*]

36 (Unlimited Action)

37 PLAINTIFF, THE PEOPLE OF THE STATE OF CALIFORNIA, alleges as follows:

38 I. INTRODUCTION

39 1. Plaintiff, the People of the State of California, brings this action to abate a
40 dangerous, gang-related public nuisance existing at a 31-unit apartment building located in the
41 North Hills neighborhood of the San Fernando Valley at 8737 Burnet Avenue, Los Angeles,
42 California 91343 (hereinafter the "Property"). Defendant Burnet Garden Apartment Complex
43 LLC ("BGAC") is the long-time owner of the Property. The Property is located a mere 363 feet
44 away from the Rosa Parks Learning Center and just 420 feet away from the North Hills
45 Community Park. This action is brought pursuant to: (1) the Public Nuisance Law ("PNL"),

1 California Civil Code section 3479, *et seq.*; and (2) the Unfair Competition Law ("UCL"),
2 California Business and Professions Code section 17200, *et seq.*

3 2. For over two decades, Columbus Street ("CST"), a violent criminal street gang,
4 has claimed the portion of North Hills that includes the Property as its gang territory or "turf."
5 CST has a long and troubling history of terrorizing the San Fernando Valley through murder,
6 shootings, violent assaults, robberies, narcotics sales, and other crime.

7 3. Beginning in the 1990s, and perhaps earlier, CST gang members began using
8 the Property as a location from which to sell narcotics. In 1998, representatives of Plaintiff and
9 the Los Angeles Police Department ("LAPD") convened a meeting with the owner of the
10 Property Mr. Duong Ly¹ to inform him of the gang-related public nuisance activity occurring at
11 the Property. At the 1998 meeting, Mr. Ly agreed to take steps to abate the nuisance activity.

12 4. Despite Mr. Ly's 1998 pledge, the nuisance activity at the Property has continued
13 unabated through the present day. For the past 20 years, CST gang members have
14 congregated in the Property's common areas drinking alcohol and using narcotics, assaulting
15 and intimidating residents and neighbors, and attracting deadly gang violence that threatens
16 the health and safety of the entire community. According to LAPD, CST gang members refer to
17 the Property as their "headquarters" or "HQ." In the past year alone, the following incidents and
18 arrests were documented and investigated by LAPD at the Property: (1) a gang-related drive-
19 by shooting in the middle of the day targeting CST gang members congregated in the
20 courtyard, resulting in one individual being shot; (2) the arrest of a CST gang member carrying
21 a loaded firearm; (3) the arrest of a CST gang member for possessing methamphetamine for
22 sale; and (4) CST gang members beat up and then shot at an individual at the Property.

23 5. To make matters worse, the shootings and other dangerous gang activity at the
24 Property occur perilously close to locations frequented by children. The Rosa Parks Learning
25 Center, an elementary school with students in kindergarten through fifth grade, is 363 feet
26 away from the Property. The North Hills Community Park, which houses outdoor basketball
27

28 1 In 2008, Mr. Ly formed BGAC, the current owner of the Property and the Defendant in this action.

1 courts, a soccer field, and a children's play area, is just 420 feet away from the Property.

2 6. Unsurprisingly, the Property has earned a reputation in the community and
3 among law enforcement as being an epicenter of violent gang activity. LAPD officers attempt
4 to mitigate the public nuisance activity occurring at the Property by patrolling the area and
5 citing gang members at the Property for trespass, but officers are fighting an uphill battle in
6 light of Defendant's failure to implement even the most basic security measures. The
7 Property's unmonitored, poorly lit common areas – in particular, the covered carports that run
8 along the side of the building – shield CST gang members from police view and are a popular
9 place for CST gang members in the neighborhood to congregate, drink alcohol, and use
10 narcotics. In addition, both the front and rear entrances to the Property remain open and
11 unlocked 24 hours a day, seven days a week, allowing CST gang members to come and go as
12 they please. Further, the complete lack of access control at the Property – which faces Burnet
13 Avenue in the front, and Memory Park Avenue in the rear – allows CST gang members to
14 easily flee police, as they have done on several occasions, by running through the Property
15 and out to the street on either side.

16 7. For the past 20 years, the owners of the Property have been on notice of the
17 dangerous public nuisance conditions at the Property and have permitted these unacceptable
18 conditions to continue. Upon information and belief, when representatives of Plaintiff and
19 LAPD informed Mr. Ly of the nuisance activity at the Property in 1998, Mr. Ly owned the
20 building with his wife as community property. In 2006, Mr. Ly and his wife transferred the
21 Property to their family trust, of which Mr. Ly and his wife were the trustees. In 2008, Mr. Ly
22 and his wife formed and transferred the Property to the current owner, Defendant BGAC, a
23 limited liability company of which Mr. Ly is and has been the sole manager. Thus, while Mr. Ly
24 has transferred legal title to the Property several times in the past 20 years, he has always
25 retained control over the Property, as he does today through Defendant BGAC.

26 8. As the current owner, Defendant BGAC has failed to prevent or abate the
27 ongoing nuisance at the Property, and as result of this failure has permitted a serious threat to
28 the general health, safety, and welfare of the law-abiding tenants at the Property and persons

1 in the surrounding area. Indeed, in spite of the ongoing CST gang activity at the Property,
2 including the recent shootings, assaults, and arrests, Plaintiff and LAPD observed the Property
3 in February 2018 and found the following conditions: (1) the front entrance to the Property was
4 open and had no locking mechanisms installed; (2) the rear entrance to the Property was flung
5 wide open and had no locking mechanisms installed; (3) poor lighting in the Property's
6 common areas where CST gang members commonly congregate; (4) drug paraphernalia
7 strewn about the unmonitored and poorly lit carport area where CST gang members commonly
8 congregate; and (4) a single "No Trespass" sign posted but painted over, completing the
9 picture of a property where, for CST gang members, anything goes.

10 9. Immediate and substantial action is necessary to abate this longstanding public
11 nuisance and protect the health and safety of the community. The intent of this nuisance
12 abatement prosecution is to compel such action as is necessary to bring the entirely
13 unacceptable state of affairs at the Property to a swift and permanent halt for the benefit of the
14 community. To that end, this nuisance abatement prosecution seeks an order requiring certain
15 physical and managerial improvements at the Property, including: improved access control
16 around the perimeter, increased lighting in the Property's common areas, internet-connected
17 video cameras with remote access for LAPD, new trespass signs posted throughout the
18 Property, and the retention of a third-party property management company to oversee the
19 implementation and maintenance of the above improvements.

20 **II. THE PARTIES AND THE PROPERTY**

21 **A. Plaintiff**

22 10. Plaintiff, the People, is the sovereign power of the State of California authorized
23 in California Code of Civil Procedure section 731 to bring actions to abate public nuisances. In
24 addition, because the City of Los Angeles has a population in excess of 750,000, California
25 Business and Professions Code section 17204 authorizes Plaintiff, the People, to prosecute
26 actions for relief under California Business and Professions Code section 17200, *et seq.* for
27 unfair competition.

1 B. Defendants

2 11. Defendant BGAC is a limited liability company established in the State of
3 California. In 2008, Mr. Ly – who has owned the Property in one capacity or another since at
4 least 1998 – formed Defendant BGAC and transferred the Property to it. Upon information and
5 belief, Mr. Ly owns at least 15 other rental properties in the City of Los Angeles, either in his
6 personal capacity or through various legal entities. Since assuming ownership of the Property
7 in 2008, Defendant BGAC has been unwilling or unable to abate the nuisance activity at the
8 Property. Defendant BGAC's inability or unwillingness to properly manage the Property has
9 permitted the existence of a dangerous public nuisance at the Property.

10 12. The true names and capacities of defendants sued herein as DOES 1 through
11 50, inclusive, are unknown to Plaintiff, who therefore sues said defendants by such fictitious
12 names. When the true names and capacities of said defendants have been ascertained,
13 Plaintiff will ask leave of the court to amend this complaint and to insert in lieu of such fictitious
14 names the true names and capacities of said fictitiously named defendants.

15 C. The Property

16 13. The Property includes a 31-unit apartment located in the North Hills
17 neighborhood of the San Fernando Valley in the City of Los Angeles. The Property's common
18 address is 8737 Burnet Avenue, Los Angeles, CA 91343; the rear entrance of the Property is
19 located at 8734 Memory Park Avenue, Los Angeles, CA 91343. The Property's Los Angeles
20 County Assessor Parcel Number ("APN") is 2654008043 and its legal description is as follows:
21 LOT1 OF TRACT NO 29314, IN THE CITY OF NORTH HILLS, COUNTY OF LOS ANGELES,
22 STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF LOS
23 ANGELES.

24 III. THE PUBLIC NUISANCE LAW

25 14. "Abatement of nuisances is a long established and well recognized exercise of
26 the state's police power." (*People ex rel. Hicks v. Sarong Gals* (1974) 42 Cal.App.3d 556, 563;
27 *People ex rel. Bradford v. Barbiere* (1917) 33 Cal.App. 770, 775-778.) Civil Code section 3479
28 defines a nuisance as "[a]nything which is injurious to health, including, but not limited to, the

1 illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction
2 to the free use of property, so as to interfere with the comfortable enjoyment of life or
3 property" (*Bakersfield v. Miller* (1966) 64 Cal.2d 93, 99 ["The Legislature has defined in
4 general terms the word 'nuisance' in Civil Code section 3479".])

5 15. Civil Code section 3480 defines a public nuisance as "one which affects at the
6 same time an entire community or neighborhood, or any considerable number of persons,
7 although the extent of the annoyance or damage inflicted upon individuals may be unequal."

8 16. The case law is "replete with examples" of "the threat violent street gangs and
9 associated illicit drug dealing pose to the safety of peaceful Californians . . ." (*Castaneda v.*
10 *Olsher* (2007) 41 Cal.4th 1205, 1216.) The California Supreme Court has explicitly recognized
11 that "[s]treet gang activity can often subject residents . . . to unacceptable levels of fear and
12 risk." (*Ibid.*) In *Medina v. Hillshore Partners* (1995) 40 Cal.App.4th 477, 486, involving a
13 wrongful death claim by the mother of a young man shot by gang members at an apartment
14 complex, the court said, "We agree that the congregation of gangs poses a foreseeable risk of
15 harm to the public." In particular, the whole spectrum of typical street gang conduct, ranging
16 from loitering, to public drinking and boisterousness, to drug dealing, to gunfire, has been held
17 to "easily meet the statutory standard" for a public nuisance under the PNL. (*People ex rel.*
18 *Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1120.) Any party that owns or otherwise controls
19 property has an "indisputable duty to take reasonable steps to maintain its premises in a
20 reasonably safe condition." (*Birke v. Oakwood Worldwide* (2009) 169 Cal.App.4th 1540, 1552.)
21 The fact that a defendant's conduct consists of omission rather than affirmative action "does
22 not preclude nuisance liability." (*Id.*)

23 17. Under Civil Code section 3491, "The remedies against a public nuisance are:
24 1. Indictment or information; 2. A civil action; or, 3. Abatement." "An abatement of a nuisance is
25 accomplished by a court of equity by means of an injunction proper and suitable to the facts of
26 each case." (*Sullivan v. Royer* (1887) 72 Cal. 248, 249.)

27 18. Code of Civil Procedure section 731 authorizes a city attorney to bring an action
28 to enjoin or abate a public nuisance. It provides, in pertinent part, "A civil action may be

1 brought in the name of the people of the State of California to abate a public nuisance . . . by
2 the city attorney of any town or city in which the nuisance exists." (*Ibid.*)

3 **IV. UNFAIR COMPETITION LAW**

4 19. The UCL, at Business and Professions Code section 17200 *et seq.*, forbids any
5 business practices otherwise forbidden by law, be it criminal, federal, state, municipal,
6 statutory, regulatory, or court-made. As the California Supreme Court has explained, the UCL
7 "borrows' violations of other laws and treats them as unlawful practices independently
8 actionable under section 17200 *et seq.*"' (*Hewlett v. Squaw Valley Ski Corp.* [(1997)] 54 Cal.
9 App. 4th [499,] 531-532, citing *Saunders v. Superior Court* [(1994)] 27 Cal. App. 4th [832,] 838-
10 839[.])" (*South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861,
11 880.)

12 20. As proscribed by the UCL, "[a]n 'unlawful business activity' includes ' "anything
13 that can properly be called a business practice and that at the same time is forbidden by law." ,
14 [Citation.]" (*People v. McKale* (1979) 25 Cal.3d 626, 632.) The ownership and operation of a
15 large rental apartment complex, such as the Property, by sophisticated nonresident owners
16 and managers doing so for the purposes of profit, is, axiomatically, a business under the UCL.
17 (*People ex rel. City of Santa Monica v. Gabriel* (2010) 186 Cal.App.4th 882, 888 ["The renting
18 of residential housing is a business"].) Mr. Ly, who owns and operates at least 15 other rental
19 properties in the City of Los Angeles, is the quintessential sophisticated nonresident owner
20 operating the Property for profit. Thus, when a property owner conducts, maintains, or permits
21 a nuisance that is unlawful under the PNL to exist on the premises of such a business, it is a
22 violation of the UCL. (See *City and County of San Francisco v. Sainez* (2000) 77 Cal.App.4th
23 1302, 1305-1308 [affirming UCL penalties for building code violations at multi-unit rental
24 property].)

25 21. Moreover, the UCL casts a broad net. "Any person who engages, has engaged,
26 or proposes to engage in unfair competition may be enjoined in any court of competent
27 jurisdiction." (Bus. & Prof. Code, § 17203.) The term person includes "natural persons,
28 corporations, firms, partnerships, joint stock companies, associations and other organizations

of persons." (Bus. & Prof. Code, § 17201.) The courts have expanded section 17200's net beyond direct liability to include common law doctrines of secondary liability where the liability of each defendant is predicated on his or her personal participation in the unlawful practices. (*People v. Toomey* (1984) 157 Cal.App.3d 1, 14-15.)

22. Civil actions under the UCL may be brought in the name of the People of the State of California by any city attorney of a city having a population in excess of 750,000 (Bus. & Prof. Code, § 17204), such as the City of Los Angeles. A public entity can sue pursuant to section 17200 based on violations of its own municipal code, state law, or other local ordinance. (See *People v. Thomas Shelton Powers, M.D., Inc.* (1992) 2 Cal.App.4th 330, 338-339.)

23. Parties engaging in violations of the UCL may be enjoined in any court of competent jurisdiction. (Bus. & Prof. Code, § 17203.) A court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice constituting unfair competition. (*Ibid.*)

V. FIRST CAUSE OF ACTION FOR PUBLIC NUISANCE

[Civil Code section 3479, et seq. --

Against Defendant BGAC and DOES 1 through 501

24. Plaintiff incorporates by reference Paragraphs 1 through 24 of this Complaint and makes them part of this First Cause of Action as though fully set forth herein.

20 25. Defendant and DOES 1 through 50 have owned, operated, managed, used, and
21 directly or indirectly permitted to be occupied and used, the Property in such a manner as to
22 constitute a public nuisance in accordance with Civil Code sections 3479 and 3480. The public
23 nuisance, as described herein, is injurious to health, indecent or offensive to the senses,
24 and/or an obstruction to the free use of property, so as to substantially and unreasonably
25 interfere with the comfortable enjoyment of life or property by those persons living on the
26 Property and in the surrounding community. The public nuisance consists of, but is not limited
27 to, gang activity on the Property; the regular, menacing, intimidating, violent, and disorderly
28 presence of gang members and/or associates at the Property; the occurrence of gunfire on the

1 Property, including gunfire that has resulted in injury to persons at the Property; and the
2 occurrence of other crimes committed by gang members and/or associates on the Property.

3 26. Defendants and DOES 1 through 50, have failed to prevent or abate the ongoing
4 nuisance at the Property, and as result of this failure and their mismanagement of the
5 Property, have caused and/or contributed to a serious threat to the general health, safety, and
6 welfare of the law-abiding tenants at the Property and persons in the area surrounding the
7 Property.

8 27. Unless Defendants and DOES 1 through 50, are restrained and enjoined by
9 order of this Court, they will continue to use, occupy, and maintain, and to aid, abet, or permit,
10 directly or indirectly, the use, occupation, and maintenance of the Property, together with the
11 fixtures and appurtenances located therein, for the purpose complained of herein, to the great
12 and irreparable damage of Plaintiff and in violation of California law.

13 **VI. SECOND CAUSE OF ACTION FOR UNFAIR COMPETITION**

14 **[Business and Professions Code section 17200, et seq. --**

15 **Against Defendant BGAC and DOES 1 through 50]**

16 28. Plaintiff hereby incorporates by reference paragraphs 1 through 28 of this
17 Complaint and makes them part of this Second Cause of Action, as if fully set forth herein.

18 29. Ownership and operation of the Property is a business. When the owner and/or
19 manager of such a business violates the PNL such that a nuisance exists and flourishes at the
20 business's premises, as alleged herein, it is also a violation of the UCL.

21 30. Defendant and DOES 1 through 50 have violated the UCL by conducting,
22 maintaining, and/or permitting, directly or indirectly, a nuisance in violation of the PNL at the
23 Property, as alleged herein.

24 31. Plaintiff has no adequate remedy at law, and unless Defendant and DOES 1
25 through 50 are restrained by this Court they will continue to commit unlawful business
26 practices or acts, thereby causing irreparable injury and harm to the public's welfare.

27 **PRAYER**

28 **WHEREFORE, PLAINTIFF PRAYS THAT THIS COURT ORDER, ADJUDGE, AND**

1 **DECREE AS FOLLOWS:**

2 **AS TO THE FIRST CAUSE OF ACTION**

3 1. That the Property, together with the fixtures and moveable property therein and
4 thereon, be declared a public nuisance and be permanently abated as such in accordance with
5 Civil Code section 3491.

6 2. That Defendant BGAC and its agents, officers, employees, and anyone acting on
7 their behalf, and their heirs and assignees, be preliminarily and perpetually enjoined from
8 operating, conducting, using, occupying, or in any way permitting the use of the Property as a
9 public nuisance. Such orders should include, but not be limited to: physical and managerial
10 improvements to the Property; secure entrances around the Property's perimeter; an internet-
11 connected video monitoring system accessible by LAPD; improved lighting; improved
12 screening of tenants; and such other orders as are appropriate to remedy the nuisance on the
13 Property and enhance the abatement process.

14 3. That Plaintiff be awarded such costs as may occur in abating said nuisance at the
15 Property and such other costs as the Court may deem just and proper.

16 4. That Plaintiff be granted such other and further relief as the Court deems just and
17 proper.

18 **AS TO THE SECOND CAUSE OF ACTION**

19 1. That Defendant be declared in violation of Business and Professions Code
20 section 17200.

21 2. That Defendant, as well as its agents, heirs, successors, and anyone acting on
22 their behalf, be permanently enjoined from maintaining, operating, or permitting any unlawful or
23 unfair business acts or practices in violation of Business and Professions Code section 17200.

24 3. That the Court grant a preliminary and/or permanent injunction prohibiting
25 Defendant, as well as their agents, heirs, successors, and anyone acting on their behalf, from
26 engaging in the unlawful or unfair acts and/or practices described herein at the Property and in
27 the City of Los Angeles. Such orders should include physical and managerial improvements to
28 the Property.

4. That, pursuant to Business and Professions Code section 17206, Defendant be assessed a civil penalty of \$2,500 for each and every act of unfair competition. Since Defendant has engaged in a continuing nuisance, each day constitutes an act of unfair competition and Defendant should be assessed a civil penalty not to exceed \$3.65 million dollars.

5. That, pursuant to the Court's equitable power and Business and Professions Code section 17203, the Court make such orders or judgments, including appointment of a receiver, to eliminate the unfair competition alleged herein.

AS TO ALL CAUSES OF ACTION

1. That Plaintiff recover the amount of the filing fees and the amount of the fee for the service of process or notices which would have been paid but for Government Code section 6103.5, designating it as such. The fees may, at the Court's discretion, include the amount of the fees for certifying and preparing transcripts.

2. That Plaintiff be granted such other and further relief as the Court deems just and proper.

DATED: April 17, 2018

Respectfully submitted,

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By:

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